

Supreme Court, U. S.  
FILED

AUG 15 1976

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 76-277

LOUIS HENRY DALEY, PETITIONER

v

ROSE AVIATION, INC., RESPONDENT

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PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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LOUIS HENRY DALEY  
12720 PACIFIC AVE.-APT. 6A  
LOS ANGELES, CALIF. 90066

PETITIONER PRO SE

## I N D E X

|                                 | Page    |
|---------------------------------|---------|
| Opinion below.....              | 2       |
| Jurisdiction.....               | 2       |
| Questions presented.....        | 2,3     |
| Statutes involved.....          | 3,4     |
| Statement.....                  | 4       |
| Reasons for granting the writ.. | 9,10,11 |
| Conclusion.....                 | 13      |
| Notes.....                      | iii,iv  |
| Appendix A Opinion and Judgment | 14      |

## CITATIONS

## Cases:

|  |    |
|--|----|
| Cochran v. M&M Transportation<br>Co., 110 F2d 519..... | 10 |
| Dennis v. United States,<br>384 U.S. 855.....          | 12 |
| Fitzgerald v. Estelle,<br>505 F2d 1334.....            | 7  |
| Frontiero v. Richardson,<br>411 U.S. 677.....          | 9  |
| Hammond Packing Co. v.<br>Arkansas, 212 U.S. 322.....  | 11 |

|  |     |
|--|-----|
| Hovey v. Elliot, 167 U.S. 409..                              | 11  |
| Kinselia v. United States,<br>361 U.S. 234.....              | 12  |
| Middlebrooks v. U.S.,<br>500 F2d 1355.....                   | 8,9 |
| U.S. ex rel Cameron v. People<br>of N.Y., 382 FSupp 182..... | 12  |
| United States v. Powell,<br>379 U.S. 48.....                 | 8   |

NOTES

From Armour and Co. v. Wontcock 323 U.S.  
126  
"The Trial Court made no findings of  
fact as such. Trial Court's "Conclu-  
sions of Law" was something else-Mr.  
Justice Jackson. Notes.

Re: Prejudicial error -

From McCandless v. United States, 298  
U.S. 342  
The Supreme Court of the United States  
has varied the previous rule now by  
requiring that absence of prejudice be  
shown by the appellee.

From Frontiero v. Richardson (Supra  
infra) 411 U.S. 677, Comments by  
Justices

Invidious Discrimination: -

Dissimilar treatment of persons similar-  
ily situated without regard to their  
individual qualifications. Mr. Justice  
Stewart--an invidious discrimination in  
violation of the Constitution; Justice  
Brennan, Justice Douglas, Justice White,  
Justice Marshall--Unjustifiable Dis-  
crimination acts violate due process  
clause of the 5th Amendment; Justice  
Powell, Justice Blackman and the Chief  
Justice concurring in the Judgment.

iii

From Campana Corp. v. Harrison, 114 F2d  
400-405

"Of course Federal Rule 52 does not re-  
quire us to accept fact findings unsup-  
ported by the evidence nor does this  
rule require us to respect conclusions  
of law which do not rest properly on  
the facts so found."

CR- (District) Court Clerk's Record on  
Appeal

iiii

IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1976

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NO.

LOUIS HENRY DALEY, PETITIONER

v.

ROSE AVIATION, INC., RESPONDENT

---

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

The petitioner pro se respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case on April 16, 1976.

2  
OPINION BELOW

The opinion of the Court of Appeals appears in the Appendix A hereto pp. 14. No opinion was rendered by the District Court for the Central District of California.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit (Appendix A infra pge 14) was entered on April 16, 1976. A timely petition for rehearing was denied on May 17, 1976 extending the time for filing this petition for certiorari with Clerk's extension to and including August 30, 1976. This Court's jurisdiction is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether U.S. District Court and U.S. Court of Appeals Orders and resultant Judgment which in effect awards unjustifiable discrimination prohibited by the Fifth Amendment to the Constitution of the United States, can stand in direct conflict with applicable rulings passed down by the Supreme Court of the United States.

2. Whether after variously being denied due process of law an adverse judgment in violation of the Fourteenth Amendment can stand against appellant petitioner Daley as if in default, when in fact the defendant, appellee,

3

respondent Rose is the party in default - further made obvious by the Court of Appeals itself, albeit heedless, in its own memorandum opinion judgment against appellant Daley of April 16, 1976 (Appendix A pgs 14 hereto infra).

3. Whether the U.S. Court of Appeals for the Ninth Circuit Panel of April 5, 1976 erred in abuse of discretion in rendering a decision on a ground which infringes on otherwise Constitutionally protected areas such as race, religion (age), etc.

#### STATUTORY PROVISIONS INVOLVED

|  | Page    |
|--|---------|
| Age Discrimination in Employment Act of December 15, 1967 pub L 90-202 81 Stat 602, 29 U.S.C. ss 621-634, 29 U.S.C. 623 (a) (1)-(2) Sec. 4(a) 1., 2., Sec. 12. Reasons #1.....   | 4,5,9   |
| The Fifth Amendment to the Constitution of the United States, Justice Brennan, Justice Douglas, Justice White and Justice Marshall - (quote) "unjustifiable Discrimination acts violate due process clause of the Fifth Amendment" (unquote) ..... | 2,5,6,9 |

| 4   | Page |
|---|------|
| Federal Aviation Act of 1958 as amended; 72 Stat 731, etc. 49 U.S.C. ss 1422-24, 49 U.S.C. ss 1432, etc.  |      |
| Federal Aviation Regulations Volume IX, part 61 - Certification of Pilots and Flight Instructors, part 67-Medical Standards and Certification, part 141-Pilot Schools ..... | 4,5  |

#### STATEMENT

This action was brought in the United States District Court for the Central District of California by Louis Henry Daley petitioner herein against the respondent Rose Aviation, Inc. employer and operator of an FAA Approved Pilot School under part 141 of the Federal Aviation Regulations, for injunction under the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621-634, on October 27, 1972 as a timely private suit after being processed through, in accord with ADEA Statute, in 1971 by the Wage and Hour Division of the U.S. Dept. of Labor, Los Angeles (who have entirely too many similar applications, with their limited appropriation, to take them to Federal Court themselves).

Petitioner Daley holder of four FAA Certifications, consistently maintains himself as CFIAIA Certificated, Renewed under part 61.197, Current VFR and IFR under part 61.57 and thereby Effective

(with appropriate current FAA Medical Certificate) under part 61.19 of the Federal Aviation Regulations, also, may the Court note, petitioner Daley consistently with valid, current, periodic re-evaluation of his proficiency as pilot in command-in short Daley consistently with current FAA Proficiency Flight Examination in addition to Renewed flight instructor certificates - improperly ignored by the lower Courts and both of which completely disregarded the proof, including, the Affidavit by the FAA Accident Prevention Coordinator, FAA Regional Hdqtrs., Western Region Daley filed December 11, 1974 .(CR ppgs 113-114).

Daley passed the FAA written examinations and then passed the oral and flight examinations securing the last two of his FAA Certifications after flight training by and at the expense of \$2,438.00 paid to Rose Aviation, Inc., respondent, in 1970. Mrs. Jean P. Rose, respondent is an FAA Designee Pilot Examiner who herself passed Daley on his oral and flight examinations for instrument pilot rating, herself convincing Daley several times over that he could have a job as flight instructor right there with her pilot school. No employment.

Settlement Reached December 5th & 6th 1973 which did of course preclude the December 11, 1973 Court trial (CR page 67). December 31, 1973 Rose REFUSED to administer the \*proficiency flight examination trial to Daley which was to be Daley's part of the purported "Settlement Reached" which \* Daley ultimately

satisfied, irrespective of Rose, in preparation as CFIAIA, for the June 11, 1974 Court trial date.

June 11, 1974 District Court Judgment against Rose pursuant to stipulation by the attorneys, Daley employed by Court Order to commence work as full time flight instructor for Rose June 17, 1974 and at 9:00 AM as directed by Rose. Daley reported to work at said 9:00 AM June 17, 1974 and with fresh current FAA Proficiency Flight Examination in addition to Renewed flight instructor certificates (CR pgs 113 + 114).

No work allowed by Rose despite no deficiency established nor involved, nor even claimed by Rose.

After Rose own "within the first two weeks" (14 days) time period stipulation - not within - Rose then, on the afternoon of July 1, 1974, too late, did make their illegal demand that Daley must pass his valid flight instructor oral and flight practical examinations all over again and - that has never been in any judgment. Rose own time period stipulation prgrph #1 of June 11, 1974 Judgment excerpt Appendix A pge 14 hereto. Rose successful in evading a new Court trial however, since it also ran Daley too late to file. Rose then in default, in failure of consideration and in fraud.

September 30, 1974 new District Court order, entered October 23, 1974, Amendment to original June 11, 1974 judgment undefined, designed by intent to deceive and with no within time period stipulation for Rose to be obligated by and in

subterfuge to better effect Rose illegal demand on Daley (supra) which Court of Appeals specifically did, properly set aside.

Daley discharged his former attorney due to attorney's deliberate inadequacy, in that he did not even try to inform the District Court Judge in September 30, 1974 Hearing that Daley has the FAA Proficiency Flight Examination passed, in addition to Renewed Flight Instructor Certificates, even though Daley has never been bound or obligated by the Flight exam clause portion of prgrph #1 of the judgment because of Rose default and failure of consideration. Daley denied due process thereby.

From Fitzgerald v. Estelle, 505 F2d 1334, "Whenever lawyer's ineffectiveness has rendered a trial fundamentally unfair, whether he be retained or appointed and whether his action or inaction was known or unknown to state trial officials, a deprivation of 14th Amendment due process results from the enforcement of the resultant Judgment", "and one must not become dormantly stuck with the resultant Judgment".

The District Court Judge's surgery and convalescence set back Daley's Hearing as plaintiff in pro per until December 16, 1974. Then the unheard "Hearing", the Court blocked Daley's efforts to clarify-to make known to the Judge-any facts or points involved and contemptuously disregarded the affidavit from FAA Regional Hdqtrs. (page 5 supra -CR pgs 113-114) then told Daley to

appeal. This final order of denial entered January 7, 1975.<sup>8</sup>

January 28, 1975 Daley filed Notice of Appeal to U.S. Court of Appeals for the Ninth Circuit; docketed #75-1847 and record filed in Ninth Circuit Court April 16, 1975.

Hearing held on April 5, 1976 before Circuit Judges Ely and Goodwin and District Judge East by designation-but unmonitored on the important points upon which this case turns. No meaningful Hearing is no Hearing per se. Daley, yet denied his day in Court thereby. United States v. Powell, 379 U.S. 48, on "Right to be Heard".

April 16, 1976 entered adverse judgment (Appendix A hereto) and timely petition for rehearing denied, motion for stay of mandate rejected, motion for recall of mandate denied in blanket type fashion-as in no further action on this case unless requested by Rose attorneys-after adverse judgment as if Daley in disobedience. Denied due process thereby due to the defraudation of the United States Courts by Rose, with Rose fraudulent misrepresentations throughout the litigation and the ultimate in fraudulent guarantee to Ninth Circuit Court Panel in April 5, 1976 Hearing.

From Middle brooks v. U.S.  
500 F2d 1355,

"If the inaccuracies in Government's brief in direct appeal affected Court of Appeals determination of legal issues raised on that appeal defendant would

have been denied due process in pursuing the appeal he was guaranteed as a matter of right."<sup>9</sup>

#### REASONS FOR GRANTING WRIT

1. The unjustifiable discrimination against petitioner Daley by respondent Rose prohibited by the 5th Amendment to the Constitution and prohibited by the Age Discrimination in Employment Act of 1967 because no other Certificated, Renewed, Current and thereby Effective flight instructor Rose ever had was ever required by Rose to pass his valid flight instructor oral and flight practical examinations all over again in order to, allegedly, be allowed access to Rose students and airplanes.

From *Frontiero v. Richardson*,  
36 LEd 583, 411 U.S. 677 (1973)

"unjustifiably discriminated in violation of the due process clause of the Fifth Amendment. District Court denied May 14, 1973. On direct appeal (8) eight members of the United States Supreme Court, although not agreeing on an opinion, agreed that the judgment be Reversed on the ground that the difference in treatment between servicewomen and servicemen under the statutes constituted an unconditional discrimination against servicewomen" (see in NOTES (supra) (comments by Justices herein).

If this lower Court's judgment is let stand thousands of flight instructors could be severely affected as it would mean that any District or Circuit Judge

- with no justification whatsoever -<sup>10</sup> could issue an Order to operate as to illegally require any flight instructor to \*pass his valid flight instructor oral and flight practical examinations all over again or be unemployed - further compounded by the fraudulent misuse of it by the party who seeks illegal advantage with it. A spade is a spade. If you buy a spade, when you get it home it will still be a spade.

So then the Supreme Court of the United States knows why Rose did not try to get that sought\* - indicated as such in the judgment - Rose had another Court trial to evade.

From *Cochran v. M&M Transportation Co.*, 110 F2d 519,  
Re: Judgment of Appellate (Ninth Circuit) Court, although being the "Law of the Case" quote "It is not an inexorable Command and must not be utilized to accomplish an obvious injustice".

2. The afternoon of July 1, 1974 when Rose did then make their illegal demand on Daley (supra) nor any other part of July 1, 1974 may be counted, by any manner of means, as being within Rose own two week (14 days) time period stipulation commencing count on and with June 17, 1974 Daley's first work day by Court order of June 11, 1974.

The Court of Appeals claimed then that July 1, 1974 was within the 14 days preceding July 1, 1974 as a means to hold Daley as if in disobedience by improperly ignoring the evidence and the

proof, to justify their adverse judgment<sup>11</sup> against Daley of April 16, 1974 affirming the false assertion therein - then did not allow Daley to defend against such, further denying him due process of law in violation of the 14th Amendment to the Constitution.

The leading case in support of this proposition is:

Hovey v. Elliot (1897) 42 LEd 215,  
167 U.S. 409,

"in which the Supreme Court of the United States laid down the general proposition that due process is violated where a Court punishes contempt of a party by denying the contumacious party all right to defend an action and by rendering a decree against such party without any hearing on the merits."

Daley Without a Hearing, actually monitored specifically on that of which falsely accused and Daley's petition for rehearing denied May 17, 1976.

(1909) From Hammond Packing Co. v. Arkansas, 212 U.S. 322, 53 LEd 530  
"which distinguished between the justifiable use of such measures (striking pleadings, default judgment, etc.) as a means of compelling the production of evidence and their unjustifiable use as in Hovey v. Elliot (supra), for the mere purpose of punishing for contempt."

In petitioner Daley's case at hand, was the generating source the Court claiming the right to create a presumption flowing from a misapprehension as to failure to produce? while at the

<sup>12</sup> same time improperly ignoring the evidence and disregarding the proof?

From Dennis v. United States,  
384 U.S. 855

U.S. Supreme Court: - We cannot accept the view of the Court of Appeals that it is "Safe to Assume" no inconsistencies would have come to light if the grand jury testimony had been examined. There is no justification for relying upon "Assumptions".

### 3. Amplifying Reason 3:

From U.S. ex rel Cameron v. People of New York, 382 FSupp 182

"It is only when abuse of discretion is such that it consists of either a total failure to consider an application as required by law or rendering a decision on a ground which infringes on otherwise Constitutionally protected areas such as race, religion (age) etc., that Federal Courts must intercede and secure due process of law."

From Kinselia v. United States,  
4 LEd 268, 361 U.S. 234

"Due process has to do with the denial of fundamental fairness, shocking to the universal sense of justice; it deals neither with power nor with jurisdiction, but with their exercise".

<sup>13</sup>  
CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

*Louis Henry Daley*  
LOUIS HENRY DALEY  
12720 Pacific Ave.  
Apartment 6A  
Los Angeles, Ca. 90066

Petitioner Pro Se

DATED: August 20, 1976

State of California ) ss.  
County of Los Angeles )

Subscribed and sworn to before me  
this 20th day of August, 1976.

*Ann Herrera*  
ANN HERRERA  
Notary Public in and for Said  
County and State



CERTIFICATE OF SERVICE BY  
AFFIDAVIT OF SERVICE BY MAIL  
(hereto infra)

<sup>14</sup>  
APPENDIX A-1 FILED  
Apr. 16, 1976  
Emil E. Melfi, Jr.  
Clerk, U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LOUIS HENRY DALEY ) No. 75-1847

Appellant, )

v. ) MEMORANDUM

ROSE AVIATION, INC., )

Appellee. )

)

Appeal from the United States  
District Court for the Central  
District of California

Before: ELY and GOODWIN, Circuit Judges,  
and EAST, District Judge.\*

Daley sued the appellee (Rose), alleging that the latter, in its employment practice, had unlawfully discriminated against him because of his

\*Honorable William G. East, Senior United States District Judge, Eugene, Oregon, sitting by designation.

age. After the attorneys for the parties had reached a compromise agreement, to which Daley agreed, and entered into a written stipulation for judgment, the District Court entered its judgment in line with the stipulation. The first paragraph of the judgment, which was dated June 11, 1974, reads as follows:

1. Defendant shall accept plaintiff as an employee as a flight instructor to commence on the first Monday following the execution of the Stipulation between the parties. Defendant may reserve the right to require plaintiff to pass a proficiency flight examination conducted by a neutral FAA GADO flight inspector within the first two weeks of his employment.

Daley became an employee of Rose on June 17, 1974, and, on July 1, 1974, Rose, pursuant to the judgment, requested that Daley undergo a proficiency flight examination by a neutral flight inspector. Daley refused the request, claiming that he already possessed all official flight certificates required for the performance of the duties for which he was employed. This declination on the part of Daley led Daley to move the District Court to enter an Order clarifying the previous judgment. In effect, Daley requested the court to declare that he was not required to comply with the request to undergo a proficiency flight examination because of the certificates that he

already possessed. In connection with this motion, Daley's counsel remarked, inter alia, "We will take any test . ." Daley thereupon abandoned his lawyer, the District Court ultimately denied Daley's motion to clarify the original judgment, and this appeal followed.

The District Court's judgment is unambiguous. It gave to Rose the absolute right to require Daley to undergo and pass a proficiency flight examination within the first two weeks of Daley's employment. Rose exercised its right to impose that requirement within the prescribed period. The right, granted by stipulation and fixed by judgment, was independent, not qualified or made extinguishable by any exception whatsoever, including the previous issuance to Daley of flight certificates of whatever character. Even if it be assumed that Daley mistakenly agreed to the stipulation pursuant to which the challenged judgment was entered, there is no legally justifiable basis upon which we could conscientiously overturn the judgment or the District Court's subsequent Order denying the motion for clarification. Accordingly, the judgment must be, and the same hereby is

AFFIRMED.

(unsigned)

## APPENDIX A-4

FILED

May 17, 1976

Emil E. Melfi, Jr.

**Clerk, U.S. Court of Appeals**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LOUIS HENRY DALEY, ) No. 75-1847

Appellant, )

v

) O R D E R

**ROSE AVIATION, INC., )**

Appellee. ) Docketed  
May 19, 1976

**Docketed**

May 19, 1976

Before: ELY and GOODWIN, Circuit Judges,  
and EAST, District Judge.\*

The appellant's motion that he be permitted to file only the original and three copies of his Petition for Rehearing, said motion having been filed herein on April 29, 1976, is granted. The Clerk is directed to file the Petition and also the appellant's Exhibit "1" to his Petition, received in the Clerk's office on May 3, 1976.

The Petition for Rehearing  
is denied. (unsigned)

\*Honorable William G. East, Senior United States District Judge, Eugene, Oregon, sitting by designation.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO.

**LOUIS HENRY DALEY, PETITIONER**

V

**ROSE AVIATION, INC., RESPONDENT**

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) ss.

LOUIS HENRY DALEY, being first duly sworn, deposes and says:

That he is a citizen of the United States and a resident of Los Angeles County, California; that his residence address is 12720 Pacific Avenue, Apt. 6A, Los Angeles, California 90066; that he is over the age of 18 years, a party to the above-entitled action.

That on August 20, 1976, he deposited in the United States mail, Los Angeles, California, in an envelope bearing the requisite postage, 3 copies, PETITION

FOR CERTIORARI addressed to Attorney for Respondent, Richard G. Harris, Esq., Law Offices of Harris and Aranda, Harbour House, 4500 Via Marina, Marina del Rey, California 90291, last known address, at which place there is a delivery service by United States mail from said post office.

Louis Henry Daley  
LOUIS HENRY DALEY  
Petitioner Pro Se

SUBSCRIBED and SWORN to before me this 20th day of August, 1976.

Ann Herrera  
Notary Public in and for said County and State

My Commission expires February 27, 1978

